

REMARKS

Summary of the Examiner's Actions in the Parent Application

In the Office Action of February 21, 2003, in Application Number 10/145,997 ("the Parent Application"), the examiner made the following objections and rejections:

The examiner objected to Claim 15 as being substantially duplicative of Claim 14. Applicant acknowledges the examiner's objection.

The examiner rejected Claims 11-17 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Applicant acknowledges the examiner's rejection under 35 U.S.C. § 112, second paragraph.

The examiner rejected Claims 11-17 under 35 U.S.C. § 102(b) as being anticipated by Roessler, et al., U.S. Patent Number 5,476,457 ("Roessler"). Applicant acknowledges the examiner's rejection under 35 U.S.C. § 102.

Cancellation of Claims from Original Specification

Applicant has cancelled Claims 1-10 occurring in the original specification, without prejudice, in favor of new Claims 11-15.

Objections to the Claims in Parent Application

Applicant has presented new Claims 11-15. Applicant respectfully submits that new Claims 11-15 are not subject to the objection from the Office Action of February 21, 2003 in the Parent Application

Rejection under 35 U.S.C. § 112, second paragraph in Parent Application

Applicant has presented new Claims 11-16. Claim 11 has been written to make the antecedent basis of the phrase "body-side" clear and to clarify to what portions of the disposable menstrual undergarment the second absorbent layer is attached. Claims 13 and 14 have been rewritten to clarify the number of leg openings being

claimed. Claim 14 has been rewritten to remove any grammatically incorrect phrasing. Applicant respectfully submits that new Claims 11-15 are not subject to the rejection under 35 U.S.C. § 112, second paragraph from the Office Action of February 21, 2003 in the Parent Application.

Rejections under 35 U.S.C. § 102(b)

Applicant respectfully submits that Roessler does not anticipate the claims of the present invention under 35 U.S.C. § 102(b). Section 2131 of the Manual of Patent Examining Procedure describes the basis for anticipation under 35 U.S.C. § 102. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

Roessler describes a disposable absorbent article with a flushable insert. Specifically, Roessler describes a single-use item. Roessler, col. 12, line 67. The two absorbent areas of Roessler, the insert pad 21 and the secondary absorbent layer 26 are intended to work in tandem to absorb a single large volume discharge. *Id.* at col. 12, lines 58-66. Thus, the specification of Roessler disagrees with the examiner's position that "the article of Roessler is fully capable of being used such that the second absorbent layer (21) would be soiled and then discarded, and the panty (22) with the first absorbent would then be able to used again, until discarded." This distinction submitted in the Parent Application as Claim 17 has been incorporated in Claim 11 of this continuation. Accordingly, Applicant respectfully suggests that the examiner's rejection of Claim 11 under 35 U.S.C. § 102(b) has been traversed.

Claims 12-15 depend, either directly or indirectly, from independent Claim 11, which Applicant believes to be allowable over the cited prior art. Accordingly, it is respectfully submitted that Claims 12-15 are allowable depending from an allowable base claim.

Summary

In view of the addition of Claims 11-15, the cancellation of Claims 1-10, without prejudice, and the arguments presented herein, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the examiner is respectfully requested. If, however, the examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ken Hoffmeister", written over a horizontal line.

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